

REMARKS

This amendment is in response to the Office Action dated July 27, 2006. Reconsideration of this application, as amended, is respectfully requested.

I. Status of the Claims:

Claims 1-21 and 27-28 are currently pending.

II. Rejections Under 35 U.S.C. § 102 and § 103

Claims 1-2 stand rejected as anticipated by or obvious over U.S. Patent No. 4,125,032 issued to Kobayashi et al. (hereafter "Kobayashi"). Claims 27-28 stand rejected as anticipated by Kobayashi et al.

The polyester composition of Kobayashi is not an elastomer. Therefore, Kobayashi does not teach or suggest a tube having "at least one layer consisting essentially of a polyester-based elastomer". More particularly, Kobayashi teaches a tube containing at least 80 mol% of polyethylene terephthalate (PET). Polyethylene terephthalate has a glass transition temperature of about 169°F (76°C). Below 169°F, PET is like glass. For this reason alone, Kobayashi does not teach or suggest "at least one layer consisting essentially of a polyester-based elastomer".

The Examiner refers to column 9, lines 53-63 as disclosing a single layer of the polyester-based elastomer. This section refers to sufficient crystallization under general molding conditions; the cited section does not teach a single layer of a polyester-based elastomer. While column 5, lines 5-66 of Kobayashi refers to introduction of small amounts of an elastic polyester resin, the incorporation of such small amounts of elastic resin to the PET does not yield an elastomer layer. To the contrary, the elastic polyester resin is added "to enhance the dispersibility of the organic crystallization promoting agent and **further to promote the crystallization**" (Kobayashi, col. 5, lines 8-10).

As noted in Applicants' April 10, 2006 response, claim 1 was previously amended to call for at least one layer *consisting essentially of* a polyester-based elastomer solely in order to advance prosecution. As noted above, Kobayashi does not teach an elastomer layer, much less a tube including an elastomer layer that consists essentially of the recited components. Nevertheless, the Examiner contends that Applicants have not shown that the introduction of additional steps or components would materially change the characteristics of applicant's invention. Applicants respectfully disagree with this assertion, as the inclusion of the organic crystallization promoting agent increases crystallization. The greater the ratio of crystalline to amorphous phase, the stronger, harder more rigid, and less easily deformable the polymer will be. (See Exhibit A of applicants April 10, 2006 Amendment). Accordingly, the inclusion of the organic crystallization promoting agent (or the 80 mol% PET) would materially change the characteristics of applicants invention, which calls for an elastomer layer.

In view of the above remarks, applicants request that the anticipation and obviousness rejections over Kobayashi be withdrawn.

Claims 3-5 and 16-18 stand rejected as obvious over Kobayashi in view of JP 2000290483 (hereafter "JP '483"). As noted above, Kobayashi does not disclose an elastomer layer. Instead, Kobayashi discloses a rigid structure. Instead of a rigid structure like Kobayashi, JP '483 discloses an elastomer -- two fundamentally different types of materials. The only motivation for combining an elastomer layer and a more-rigid crystalline-based polyester layer is found in the present application, which cannot be used as motivation for making the combination. In the absence of any motivation to provide an elastomer layer and a crystalline-based polyester layer within the same tube, applicants respectfully submit that a *prima facie* case of obviousness has not been established and request that the rejection be withdrawn.


Claims 6-7 and 11-12 stand rejected as obvious over Kobayashi in view of U.S. Patent No. 4,510,968 issued to Rau (hereafter "Rau"). Claims 8-10, 13-15 and 19-21 stand rejected as obvious over Kobayashi in view of JP '483, further in view of Rau. The Examiner cites Rau to provide a fuel feed tube usable within an engine compartment of a motor vehicle, wherein the tube further comprises a bellows portion extending at least a portion of its length. Rau does not, however, disclose or suggest the subject matter that is not taught or suggested by both Kobayashi or JP' 483, nor does Rau provide motivation to provide a tube having both an elastomer layer and a crystalline-based polyester layer. Applicants request that this rejection be withdrawn.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue. Further, if claims 1-21 are passed to allowance, Applicants respectfully request that claims 22-26 be rejoined and also passed to allowance. However, if there are any questions regarding this amendment, or the application in general, a telephone call to the undersigned would be appreciated since this would expedite the prosecution of the application for all concerned.

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Respectfully submitted,

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